

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
LETTERS PATENT APPEAL NO. 248 OF 2006  
IN  
CIVIL WRIT PETITION NO. 3732 OF 2006**

**Mr.Madhukar Shankar Parsekar.. Appellant**

**vs**

**The State of Maharashtra & ors.. Respondents**

Mr.H.S.Anand for Appellant  
Mr.G.S.Godbole i/b Warekar & Warekar for  
Respondent nos. 5 and 6.  
Ms. P.S.Cardozo AGP for State  
Mr.G.D.Utangale for Respondent no. 2

**CORAM : D.G.DESHPANDE AND  
SMT ROSHAN .S.DALVI, JJ  
DATE: 29th November, 2006**

**JUDGMENT (Per Smt [R.S.Dalvi](#), J)**

1. This appeal challenges the order of the learned Single Judge dated 5<sup>th</sup> October, 2006 in Writ Petition No. 3732 of 2006 in which the order dated 24<sup>th</sup> May, 2006 passed by the Administrator and Divisional Commissioner, Konkan Division, Mumbai directing the appellants to hand over the vacant possession of their premises and directing them to shift to an alternate accommodation provided by the respondent no. 5

thereof under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (the said Act) was passed by the Slum Tribunal constituted under the said Act.

2. In such a petition, the Administrator and Divisional Commissioner, Konkan Division, Mumbai passed the impugned order therein dated 24<sup>th</sup> May, 2006. The appellant challenged the said order on three grounds :

(i) that the appellate authority did not given them an opportunity of being heard by refusing the application for adjournment.

(ii) That order was passed by the “lower appellate authority” who was not the right authority constituted under the said Act to pass the said order, and

(iii) that the material put forth before the said authority showed the appellant being in possession of much larger area than the area allotted by way of alternate accommodation to him.

3. The learned Single Judge considered each of these aspects on merits and dismissed the Writ

Petition.

4. It is contended on behalf of the petitioners that the order was passed essentially under Article 226 of the Constitution of India and hence is appealable under clause 15 of the Letters Patent establishing this Court. It is contended on behalf of the respondents that the order was merely passed in supervisory jurisdiction of this Court under Article 227 of the Constitution of India and is consequently not available in intra-court appeal.

5. “The lower appellate authority” appointed under the said Act has been held to be a tribunal subject to the supervisory jurisdiction of this Court under Article 227 of the Constitution of India in the case of **Bhikaji Tukaram Jadhav vs State of Maharashtra reported in 2002 5 BCR 83-86**. An order passed by the said tribunal can therefore not be challenged under Article 226 of the Constitution of

India. It can only be challenged under Article 227 of the Constitution of India.

6. Mr.Anand on behalf of the appellant has drawn our attention to the judgment of the Supreme Court in the case of **Kishorilal vs Sales Officer, District Land Development Bank reported in (2006) 7 SCC 496** to show that this appeal is maintainable. That judgment shows that against a decision in a Writ Petition filed under Articles 226 and 227 of the Constitution of India, **L.P.A.** is maintainable. That is indeed true. If the Writ Petition is filed under these Articles challenging any executive/administrative order in its original jurisdiction as well as challenging any judicial order of any tribunal in its appellate jurisdiction, the **L.P.A.** would be maintainable. However, this appeal is filed only challenging the order of what is stated to be “the lower appellate authority.” That lower appellate authority is a creature of the statute. In this case, it is the Slum Act. No other order

is challenged.

7. This [L.P.A.](#) is filed only under Article 227 of the Constitution, the phraseology of the title of the petition or the averments therein, notwithstanding. It is, therefore, clearly not maintainable and is accordingly dismissed in limine.

After the order was pronounced, learned counsel for the appellant urged that the status quo be continued in order to enable them to challenge this order. We do not find any merit in this prayer. Giving ad-interim status quo before admission certainly depends upon the ultimate decision at the time of the admission, that does not entitle the appellants to seek continuation of status quo. Prayer rejected.

**(Smt Roshan Dalvi, J)**

**(D.G.Deshpande,J)**

